

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Thomas Anderson  
Michele Anderson

NOTICE OF HEARING AND  
MOTION FOR RELIEF FROM  
AUTOMATIC STAY

Debtors

Chapter 13, Case No. 03-38323

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TO: Thomas Anderson and Michele Anderson, INCLUDING TRUSTEE AND OTHER  
INTERESTED PARTIES

1. National City Mortgage Co., (*Movant*), a corporation, by its undersigned attorneys, moves the Court for the relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion at 10:30 am on September 7, 2004, in Courtroom 228B, 316 North Robert Street, St. Paul, MN 55101 or as soon thereafter as counsel can be heard.

3. Any response to this motion must be filed and delivered not later than on September 1, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than August 26, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays).

UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

4. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Federal Rules of Bankruptcy Procedure 5005 and Local Rule 1070-1, and is a core

proceeding. The petition commencing this Chapter 13 case was filed on December 11, 2003. The case is now pending in this court.

5. This motion arises under 11 U.S.C. § 362 and Federal Rules of Bankruptcy Procedure 4001. This motion is filed under Federal Rules of Bankruptcy Procedure 9014 and Local Rules 1201-1215. Movant requests relief with respect to a mortgage lien encumbering real property of Debtors.

6. Debtors above-named are the owners of certain real property located at 1522 11th Street Southeast, Forest Lake, MN 55025, legally described as follows, to-wit:

All that part of Lot 10, Block 1, Hehner's Addition Lying East of the West 25 feet thereof

7. The indebtedness of Thomas Anderson and Michele Anderson is evidenced by a Promissory Note and Mortgage dated May 19, 1999, filed of record in the Washington County Recorder's office on October 4, 1999, and recorded as Document No. 3072064. A true and correct copy of the front page of the recorded mortgage is attached as Exhibit A.

8. Movant has filed a Proof of Claim for delinquent payments for the months of April 1, 2003 through December 1, 2003. Upon information and belief, said Plan has now been confirmed.

9. Pursuant to said Plan, the Debtors were to maintain monthly payments due and payable pursuant to the indebtedness to Movant outside the Plan.

10. The Debtors have failed to pay the monthly payments on the indebtedness, outside the Plan for the months of May 1, 2004 to the present date and as of the hearing date September 1, 2004 will be due for a total delinquency of \$7,362.53 together with reasonable attorneys fees and costs incurred pursuant to the terms of the note and mortgage.

11. By reason of the foregoing, Debtors are in default on payments under the note, mortgage and the Chapter 13 Plan. Movant is inadequately secured and entitled to have the automatic stay lifted and vacated so it can commence foreclosure against the property under the mortgage pursuant to Minnesota Statutes.

WHEREFORE, Movant by its undersigned attorney, moves the Court for an Order that the automatic stay provided by 11 U.S.C. Section 362 (A) be terminated to permit Movant to foreclose its mortgage on the subject property, and for such other and further relief as may be just and equitable.

Dated: August 19, 2004

USSET & WEINGARDEN P.L.L.P

By: /E/ Paul A. Weingarden/Brian H. Liebo  
Paul A. Weingarden, #115356  
Brian H. Liebo #277654  
Attorney for Movant  
4500 Park Glen Road, #120  
Minneapolis, MN 55416  
(952) 925-6888

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Thomas Anderson  
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AFFIDAVIT OF PETITIONER

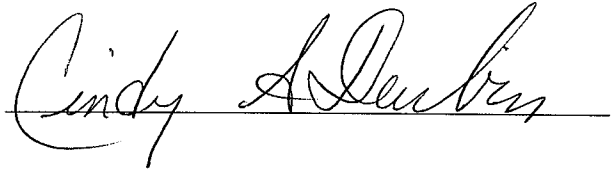
Debtors

Chapter 13, Case No. 03-38323  
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STATE OF OHIO        )

COUNTY OF MONTGOMERY        )

Cindy A. Durbin \_\_\_\_\_, being first duly sworn, deposes and states on oath that she/he is employed by National City Mortgage Co., the movant in this action, that she/he has read the annexed Notice of Hearing and Motion for Relief From Automatic Stay, and that it is true of her/his knowledge to the best of her/his information.



Subscribed and sworn to before me this  
11<sup>th</sup> day of Aug., 2004.

  
Notary Public

**JULIA A. JORDAN, Notary Public**  
**In and for the State of Ohio**  
**My Commission Expires JULY 27, 2007**

WASHINGTON COUNTY  
09-01-1999 Receipt No: 31807  
Registration tax hereon of \$382.49 Paid  
MN Conservation Fund M.S. 473H \$5.00 Paid  
Virginia R. Erdahl, Auditor-Treasurer by OSmonet

3072064



ABSTRACT

Office of the  
County Recorder  
Washington County, MN

Certified filed and/or recorded on:  
1999/10/04 4:55:00 PM



County Recorder  
County Recorder

*Linda Korman*

*Diversified Closers*

[Space Above This Line For Recording Data]

0009497398

MORTGAGE

NOTICE: THIS LOAN IS NOT ASSUMABLE WITHOUT  
THE APPROVAL OF THE DEPARTMENT OF VETERANS  
AFFAIRS OR ITS AUTHORIZED AGENT.

THIS MORTGAGE ("Security Instrument") is given on May 19, 1999  
The mortgagor is  
THOMAS E ANDERSON and MICHELE J ANDERSON Husband and Wife

("Borrower"). This Security Instrument is given to National City Mortgage Co dba  
Commonwealth United Mortgage Company

which is organized and existing under the laws of The State of Ohio  
address is 3232 Newmark Drive, Miamisburg, OH 45342

, and whose

("Lender"). Borrower owes Lender the principal sum of  
ONE HUNDRED SIXTY SIX THOUSAND TWO HUNDRED SIXTY & 00/100

Dollars (U.S. \$ 166,260.00 ).

This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which  
provides for monthly payments with the full debt, if not paid earlier, due and payable on  
June 1, 2029 and for interest at the yearly rate of 7.750

percent. This Security Instrument secures to Lender: (a) the repayment of  
the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the  
payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security

MINNESOTA-Single Family-FNMA/FHLMC UNIFORM INSTRUMENT

6040 -5V(MN) (8803)

Form 3024 9/90  
Amended 5/91

Page 1 of 8

VMP MORTGAGE FORMS - (800) 521-7251



Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender, with power of sale, the following described property located in Washington County, Minnesota:

ALL THAT PART OF LOT 10, BLOCK 1, HEHNER'S ADDITION LYING EAST OF THE WEST 25 FEET THEREOF, WASHINGTON COUNTY, MINNESOTA.

which has the address of 1522 11TH ST SE, FOREST LAKE Minnesota 55025 (Zip Code) ("Property Address");

(Street, City)

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to mortgage, grant and convey the Property, and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal and Interest; Prepayment and Late Charges. Borrower shall promptly pay when due the principal of and interest on the debt evidenced by the Note and any prepayment and late charges due under the Note.

2. Funds for Taxes and Insurance. Subject to applicable law or to a written waiver by Lender, Borrower shall pay to Lender on the day monthly payments are due under the Note, until the Note is paid in full, a sum ("Funds") for: (a) yearly taxes and assessments which may attain priority over this Security Instrument as a lien on the Property; (b) yearly leasehold payments or ground rents on the Property, if any; (c) yearly hazard or property insurance premiums; (d) yearly flood insurance premiums, if any; (e) yearly mortgage insurance premiums, if any; and (f) any sums payable by Borrower to Lender, in accordance with the provisions of paragraph 8, in lieu of the payment of mortgage insurance premiums. These items are called "Escrow Items." Lender may, at any time, collect and hold Funds in an amount not to exceed the maximum amount a lender for a federally related mortgage loan may require for Borrower's escrow account under the federal Real Estate Settlement Procedures Act of 1974 as amended from time to time, 12 U.S.C. Section 2601 et seq. ("RESPA"), unless another law that applies to the Funds sets a lesser amount. If so, Lender may, at any time, collect and hold Funds in an amount not to exceed the lesser amount. Lender may estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with applicable law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is such an institution) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items. Lender may not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and applicable law permits Lender to make such a charge. However, Lender may require Borrower to pay a one-time charge for an

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MEMORANDUM OF LAW

Debtors

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11 U.S.C. Section 362(d) provides that on request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under section (a) of this section for cause, including lack of adequate protection of an interest in property of such party in interest. Failure of a Chapter 13 debtor to make postconfirmation payments to a mortgagee is sufficient cause for relief from the automatic stay. Reinbold vs. Dewey County Bank, 942 F.2d 1304 (8th Cir. 1991). Following the debtors' filing of the petition on December 11, 2003 no payment has been made to movant for the month(s) of May 1, 2004 to the present and as of the hearing date September 1, 2004 will be due. Accordingly, cause exists for the granting of relief from the automatic stay.

WHEREFORE, National City Mortgage Co. respectfully requests this Court to grant movant relief from the automatic stay of 11 U.S.C. Section 362(a).

Dated: August 19, 2004.      USSET & WEINGARDEN P.L.L.P

By: /E/ Paul A. Weingarden/Brian H. Liebo  
Paul A. Weingarden, #115356  
Brian H. Liebo #277654  
Attorney for Movant  
4500 Park Glen Road, #120  
Minneapolis, MN 55416  
(952) 925-6888

U.S. BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Thomas Anderson  
Michele Anderson

Debtors

UNSWORN DECLARATION  
FOR PROOF OF SERVICE

Chapter 13, Case No. 03-38323  
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Erin Kay Buss, employed on this date by USSET & WEINGARDEN, attorney(s) licensed to practice law in this court, with office address of Suite 120, 4500 Park Glen Road, Minneapolis, Minnesota 55416, upon penalty of perjury, declares that on August 19, 2004, I served the annexed Notice of Hearing and Motion for Relief from Automatic Stay upon each of the entities named below by mailing to them a copy thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at Minneapolis, Minnesota, addressed to each of them as follows:

Office of the United States Trustee  
1015 U.S. Courthouse  
300 South Fourth Street  
Minneapolis, MN 55415

Jasmine Z. Keller  
Chapter 13 Trustee  
310 Plymouth Building  
12 South 6th Street  
Minneapolis, MN 55402

Mary Jo A. Jensen-Carter  
Buckley & Jensen  
1339 E. County Road D  
Vadnais Heights, MN 55106

Thomas Anderson  
Michele Anderson  
1522 11th Street Southeast  
Forest Lake, MN 55025

/E/ Erin Kay Buss  
Erin Kay Buss



UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re:

Thomas Anderson  
Michele Anderson

ORDER

Debtors.

Chapter 13, Case No. 03-38323  
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The above entitled matter came on for hearing upon motion of National City Mortgage Co., (*Movant*) pursuant to 11 U.S.C. Section 362 on September 7, 2004 at the U.S. Bankruptcy Court, St. Paul, Minnesota. Appearances were as noted in the record. Based upon the evidence adduced at said hearing, the arguments of counsel, and the Court being fully advised of the premises,

IT IS HEREBY ORDERED THAT:

The automatic stay imposed by 11 U.S.C. §362 is hereby terminated as to the real property over which the Movant, its successors or assigns, has an interest, said property legally described as:

All that part of Lot 10, Block 1, Hehner's Addition Lying East of the West 25 feet thereof

Movant may proceed to foreclose its mortgage in accordance with Minnesota Statutes. Movant's request for attorneys fees and costs shall not be considered as this is governed by state law. Notwithstanding Federal Rules of Bankruptcy Procedure 4001(a)(3), this order is effective immediately.

Dated this \_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
Judge of the Bankruptcy Court